

Federal Communications Commission

DA 00-481

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DISPATCHED

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 00-37
Table of Allotments,)	RM-9749
FM Broadcast Stations.)	
(New Richmond, Wisconsin, Coon Rapids)	
and Moose Lake, Minnesota))	

NOTICE OF PROPOSED RULE MAKING

Adopted: February 13, 2000

Released: March 3, 2000

Comment Date: April 24, 2000

Reply Date: May 9, 2000

By the Chief, Allocations Branch

1. Before the Commission for consideration is a Petition for Rule Making filed on behalf of Smith Broadcasting Company, Inc. ("Smith"), proposing the substitution of Channel 296C2 for Channel 296C3 at New Richmond, Wisconsin, reallocation of Channel 296C2 from New Richmond, Wisconsin to Coon Rapids, Minnesota, and modification of its license for Station WIXK-FM to specify Coon Rapids as the community of license. To accommodate its proposal for Station WIXK-FM, Smith also requests the substitution of Channel 249A for Channel 296A at Moose Lake, Minnesota, and modification of the license of Station KBFH at Moose Lake. Smith stated its intention to apply for Channel 296C2 if it is reallocated to Coon Rapids, as requested.

2. Smith filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O") 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). In support of its proposal, Smith states that Channel 296C2 may be allotted to Coon Rapids consistent with the Commission's separation requirements, placing a city-grade signal over the entire community of Coon Rapids. Further, Smith states that the reallocation of Channel 296C2 to Coon Rapids is mutually exclusive with the current use of Channel 296C3 at New Richmond, will provide a first local service at Coon Rapids and that local service will continue to be provided to New Richmond by Station WIXK(AM). Smith states that it intends to relocate its transmitter site and has provided a gain and loss study showing a loss in population of 26,329 and a gain in population of 2,195,754 and states that the loss area is covered by five or more services. Smith also states that Coon Rapids is located in the Minneapolis-St. Paul Urbanized Area and has provided a showing that Coon Rapids is independent of the urbanized area.

3. Smith provided information to demonstrate that Coon Rapids is independent of the Minneapolis-St. Paul Urbanized Area pursuant to the criteria set forth in Faye and Richard Tuck ("Tuck"), 3 FCC Rcd 5374 (1988).¹ As to signal coverage, Smith states that the 70 dBu contour will cover approximately 42% of the Urbanized Area and that Coon Rapids is located approximately 24 kilometers from Minneapolis and 30 kilometers from St. Paul. Smith points out that Coon Rapids is located in a different county (Anoka), than Minneapolis (Hennepin), and St. Paul (Ramsey) with several communities situated in between Coon Rapids and Minneapolis-St. Paul.

1) The extent to which community residents work in the larger metropolitan area rather than the specified community. Smith states that approximately 18,000 people are employed at businesses located in Coon Rapids. Some of the major employers in Coon Rapids are Mercy Hospital, Independent School District #11, Honeywell Flight Systems, Coon Rapids Medical Clinic, John Roberts Co. and RMS Co. These employers alone offer over 4600 jobs to the residents of Coon Rapids. Smith contends that there is no need for the residents of Coon Rapids to commute to Minneapolis-St. Paul to find work

2) Whether the smaller community has its own newspaper or other media that covers the community's local needs and interests. Smith states that The Coon Herald is a weekly newspaper published in Coon Rapids that focuses on local news and events. Residents also have access to the weekly Anoka County Shopper which is distributed to the homes and businesses in the area. The City of Coon Rapids has its own Cable TV Department which produces its own programming and recently purchased a mobile production van which will allow it to cover numerous local events. The city operates Channel 57 as an Interactive Information Alpha Channel and maintains its own website, www.ci.coon-rapids.mn.us.

3) Whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area. According to Smith, Coon Rapids traces its history back for nearly a century and a half as a trade center located on the route from St. Paul to the Red River Valley with its identity as a modern community growing around the Coon Creek Rapids Dam. The community took its name from the dam which now serves as the Coon rapids Dam Regional Park. The Coon Rapids Historical Commission is active in preserving the history and heritage of the community.

¹ The independent factors set forth in Tuck are 1) the extent to which the community residents work in the larger metropolitan area rather than the specified community; 2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; 3) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; 4) whether the specified community has its own local government and elected officials; and 5) whether the smaller community has its own telephone book provided by the local telephone company or zip code; 6) whether the community has its own commercial establishments, health facilities, and transportation systems; 7) the extent to which the specified community and the central city are part of the same advertising market; and 8) the extent to which the specified community relies on the larger metropolitan area for various municipal services, such as police, fire protection, schools, and libraries.

4) Whether the specified community has its own local government and elected officials. Smith states that Coon Rapids was incorporated in 1959 and is governed by a Mayor and City Council, with the city functions divided into eight departments including management, legal, city clerk, finance, community development, police, fire and public works. There are 219 full-time and 23 part-time employees working for the city. The City also maintains fourteen citizen-participation commissions and boards including planning, zoning, economic development, safety, human rights, parks and recreation, arts, capital improvement, ice arena, charter, historical, cable communication, civil service and housing and community development.

5) Whether the smaller community has its own telephone book provided by the local telephone company or zip code. Coon Rapids and the surrounding communities have their own telephone book separate from the Minneapolis-St. Paul directories. Coon Rapids has its own zip codes, 55448 and 55433.

6) Whether the community has its own commercial establishments, health facilities and transportation systems. Smith provides the following information in response to this factor. Coon Rapids has over a hundred commercial establishments, some of which use Coon Rapids in their name. Several examples are Carpet City of Coon Rapids, Coon Rapids Barber Shop, Coon Rapids Chrysler Plymouth and Coon Rapids Pet Hospital. Mercy Hospital, located in Coon Rapids, is a 350 bed hospital. In addition, the Park River Estates Care Center and the Camilla Rose Nursing Home are both located in Coon Rapids. There are also clinics and private medical practices such as the Coon Rapids Dental Center and Coon Rapids Medical Center.

Smith points out that Coon Rapids maintains many acres of park land, ball fields, a soccer complex, tennis courts, skating rinks, picnic areas, hiking and biking trails and the Riverwind Recreation Complex which includes an Olympic size swimming pool, ice arena and 36 hole golf course. Coon Rapids is home to 16 religious and civic organizations. Coon Rapids has a Civic Center with a 225 person meeting room, plus six smaller conference rooms and kitchen facilities available for rental.

7) The extent to which the community and central city are part of the same advertising market. Smith states that advertisers interested in reaching the residents of Coon Rapids have several options other than the Minneapolis-St. Paul Media to reach the residents of Coon Rapids. They may advertise in the Coon Rapids Herald, or they may advertise on the Coon Rapids Cable Television channels. Information about events can be placed on the city's website. Businesses may also contact the Metro North Chamber of Commerce which serves Coon Rapids and several other communities but not Minneapolis or St. Paul for advertising.

8) The extent to which the specified community relies on the larger metropolitan area for various municipal services, such as police, fire protection, schools, and libraries. In response, Smith states that the Coon Rapids City Center houses all city administrative offices, including police and fire administration and provides community space for seniors and other community groups. The city

provides water and sewer services and has its own Planning Commission which reviews land use projects. The Coon Rapids Police Department has 62 sworn officers, 30 reserve officers and some part-time support staff members. The Coon Rapids Fire Department consists of three fire stations. Coon Rapids has a Community Development Department for zoning and building inspection issues, a City Clerk Department for keeping records, issuing licenses and overseeing the cable television franchise which includes local programming. The Coon Rapids Public Works Department maintains the city's parks and recreation facilities, recycling program, water and sanitary sewer systems, and maintains city streets and sidewalks. Coon Rapids is part of the Anoka-Hennepin Independent School District No. 11 which has eight elementary schools, two middle schools, one standard high school and one alternative high school located in Coon Rapids. The Superintendent of the school district and administrative staff have their office in Coon Rapids. Coon Rapids also has two private schools as well as the Anoka-Ramsey Community College.

4. We believe that Smith's proposal warrants consideration since the allotment of Channel 296C2 at Coon Rapids could provide the community with its first local aural service while not depriving New Richmond of its sole local aural service. Smith has provided sufficient information to show that Coon Rapids is an independent community. Since Smith is proposing to change the transmitter site for Station WIXK-FM, he provided a gain and loss study. A staff engineering analysis confirms that there will be a gain and loss of service and that the loss area is served by at least five existing full-time services. According to a staff analysis, Channel 296C2 at Coon Rapids will provide a 70 dBu signal to 48.8 percent of the Minneapolis-St. Paul Urbanized Area.² Channel 296C2 can be allotted to Coon Rapids at Smith's proposed site in compliance with the Commission's spacing requirements provided a channel substitution is made at Moose Lake, Wisconsin.³ Smith proposes the substitution of Channel 249A for Channel 296A at Moose Lake and modification of the construction permit for Station KBFH to specify operation on Channel 249A.⁴ Smith points out that the change will permit Station KBFH to upgrade to the full six kW Class A station and would serve 11,497 more people in an area of 2,414

² If a station requests to change its community of license to one that is outside an urbanized area but whose signal would place a city grade, 70 dBu signal, over 50% or more of an Urbanized Area, the proponent is required to provide the same showings as currently required for those parties seeking to move to a community within an Urbanized Area. See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995). Although a staff engineering analysis indicates coverage by the 70 dBu signal covers 48.8% rather than 50% of the Minneapolis-St. Paul Urbanized Area. A Tuck showing is necessary here because Coon Rapids is within the Minneapolis-St. Paul Urbanized Area. Smith provided a detailed Tuck showing in its Petition for Rule Making that is summarized above.

³ The coordinates for Channel 296C2 at Coon Rapids are 45-11-42 and 93-05-14.

⁴ The coordinates for Channel 249A at Moose Lake are 46-27-10 and 92-45-47. Although the Commission's engineering data base indicates that Channel 249A, Moose Lake, is short-spaced to Station WAQE, Channel 249C3, Rice Lake, Wisconsin, Station WAQE was modified to operate on Channel 256C2 in MM Docket No. 96-15, effective January 21, 1997, and is no longer afforded protection on Channel 249C3. See 11 FCC Rcd 21001 (1996). Since Moose Lake is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian Government will be requested for the allotment at Moose Lake.

square kilometers. Smith has provided a statement from Agate Broadcasting, Inc., permittee of Channel 296A, Station KBFH, Moose Lake, consenting to the channel change and possible relocation of its transmitter site. Smith has stated it has entered into an agreement with Agate Broadcasting, Inc. for reimbursement for these changes.⁵ As requested, we shall also propose to modify the license of Station WIXK-FM to specify operation on Channel 296C2 at Coon Rapids, Minnesota, as its new community of license. In accordance with the provisions of Section 1.420(I) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 296C2 at Coon Rapids.

5. In view of the fact that the proposed allotment would provide a first local service to Coon Rapids, Minnesota, the Commission believes it would serve the public interest to solicit comments on the proposal to allot Channel 296C2 to Coon Rapids. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Moose Lake and Coon Rapids, Minnesota, and New Richmond, Wisconsin, as follows:

Community	Channel No.	
	Present	Proposed
New Richmond, Wisconsin	296C3	-----
Coon Rapids, Minnesota	-----	296C2
Moose Lake, Minnesota	296A ⁶	249A

6. IT IS ORDERED, that the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this Notice of Proposed Rule Making to the following:

Agate Broadcasting, Inc.
Station KBFH
1104 Cloquet Avenue
Cloquet, Minnesota 55720

TKC, Inc.
Station WAQE-FM
1859 21st Avenue
Rice Lake, Wisconsin 54868

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

⁵ See Circelville and Columbus, Ohio, 8 FCC 2d 159 (1967).

⁶ The allotment for Moose Lake, Minnesota, was downgraded from Channel 296C3 to Channel 296A on May 11, 1999 (BMPH-990413IF).

8. Interested parties may file comments on or before April 24, 2000, and reply comments on or before May 9, 2000, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Mark N. Lipp
Scott C. Cinnamon
Shook, Hardy & Bacon
600 14th Street, N.W., Suite 800
Washington, D. C. 20005

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed

with the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW-A325, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 445 Twelfth Street, S.W., Washington, D. C.